IN THE HIGH COURT OF JUDICTURE AT MADRAS

DATED : 17-03-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.38515 OF 2004

G. Sambandham
28/B-2, Nagalathu Street,
Kancheepuram 1. .. Petitioner

Vs.

Chief Executive Officer,
Khadi and Village Industries Board,
Kuraklagam, Chennai 108. .. Respondent

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus to call for records relating to the order passed by the respondent in Rc.29198/E3(3)/97 dated 10-10-2003 and quash the same and direct the respondent to settle all the retirement benefits payable to the petitioner, including the pension.

For Petitioner : Mr.S. Kamadevan

For Respondent : Mr.B. Divakaran

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J U D G M E N T

The facts giving rise to filing of the present writ petition are as follows :-

The petitioner who initially joined as Junior Assistant, in course of time, was promoted to the post of Superintendent and was posted as Village Industrial Co-operative Officer. He was due to retire on 30.6.1997. By order dated 25.6.1997, the petitioner was placed under suspension on the ground that enquiry into grave charges against him was contemplated and in the interest of public. However, no separate order was passed before 30.6.1997 retaining the petitioner in service beyond the normal age of superannuation nor any specific order was passed permitting the petitioner to retire from service. Subsequently, a charge memo was issued on 27.1.1998. At that stage, the petitioner filed W.P.No.18457 of

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1998 for quashing the order dated 25.6.1997, placing the petitioner under suspension. Subsequently, the petitioner also filed W.P.No.40209 of 2002 to quash the departmental proceedings in Na.Ka.No.1122/97-E1 dated 27.1.1998. Both the writ petitions were taken up together and by a common order dated 21.8.2003, both the writ petitions were allowed. The relevant portion of the order is quoted hereunder :-

> "3. As rightly submitted by the learned counsel appearing for the petitioner, such an order of suspension and further disciplinary proceedings after the date of superannuation cannot be sustained. The respondent/Institution is governed by the provisions relating to Fundamental Rule 53 in the matter of ordering suspension. In this case no separate orders were passed either not permitting petitioner to retire from service or ordering continuance of the petitioner in service. The learned Judge of this Court, while dealing with the same issue involved in these writ petitions, following the Judgment of the Apex Court, by order dated 11-3-2002 in W.P.No.2821 of 2001, held that 'in the absence of any such orders for the continuance of the service, disciplinary proceedings against the delinquent cannot be continued'.
>
> 4. Following the above said judgment of the learned Judge, the orders impugned in these Writ Petitions are set aside. Accordingly the writ petitions are allowed. ..."

2. Pursuant to the aforesaid common order, the respondent passed order dated 10.10.2003 to the following effect :-

> "ORDER:
>
> Thiru G. Sambantham, Superintendent formerly Special Officer, Swamisivanantha Multipurpose Co-operative Society, Tiruvottiyur was placed under suspension with effect from 25.6.97 vide Assistant Director (Khadi and Village Industries) Kancheepuram Proceedings second cited for having committed certain irregularities in the Co-operative society.
>
> Thiru G. Sambantham, Superintendent formerly Special Officer, Swamisivanantha Multipurpose Co-operative Society, Tiruvottiyur has moved the Hon'ble High Court to quash the suspension order issued by the Assistant Director, Khadi and Village Industries, Kancheepuram.

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Consequent on the pronouncement of judgment delivered vide reference fourth cited, Thiru G. Sambandham, Superintendent is deemed to have been retired from service with effect from the date of his superannuation on 30.6.97 A.N. without prejudice to the disciplinary, and criminal action is pending."

3. At that stage, the petitioner filed Contempt Petition No.1049 of 2004 for a direction to settle retirement benefits, which was not entertained by the Court and dismissed on 9.12.2004 observing that it was open to the petitioner to file another writ petition challenging the action of the respondent. Thereafter the present writ petition has been filed for quashing the order dated 10.10.2003.

4. The main contention of the petitioner is to the effect that in view of the order passed by the High Court in the earlier writ petitions, the respondent should not have passed an order by stating that the petitioner is deemed to have been retired from service with effect from 30.6.1997 without prejudice to the disciplinary and criminal action pending. According to the petitioner, once the earlier disciplinary proceeding was quashed in W.P.No.40209 of 2002, there was no question of passing an order that superannuation of the petitioner is subject to such disciplinary proceeding. The petitioner has submitted that since he has not been retained in service beyond the age of superannuation, no disciplinary proceeding should have been initiated subsequently.

5. A counter affidavit has been filed on behalf of the respondent stating that the petitioner has been placed under suspension as enquiry into grave irregularities was contemplated. The order of suspension was set aside on 21.8.2003 on the ground that the provisions relating to Fundamental Rule 53 had not been followed and after the age of superannuation no order had been passed continuing the petitioner in service and not allowing him to retire and, therefore, the petitioner was allowed to retire without prejudice to the disciplinary cases pending against him with effect from 30.6.1997. It has been further stated :-

"6) Further the Writ Petitioner had filed another Writ Petition in W.P.No.40209 of 2002 challenging the charge memo framed under regulation 34(b) of the Tamilnadu Khadi and Village Industries Board's Service Regulation and had obtained interim stay order which had subsequently been made absolute by orders of the Hon'ble High Court. Therefore the Board could not proceed with the further action in the above matter.

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7) I submit that the enquiry into the charges wherein the petitioner is alleged to have caused loss of Rs.1,67,23,933.35 when he was the Special Officer of Thirumazhisai Multipurpose Co-operative Society and also the fact that certain irregularities committed by him in the supply of play materials to Education Department have been taken up and in view of the stay granted by this Hon'ble High Court, further proceedings could not be pursued."

In other paragraphs it has been also indicated that the petitioner was facing charges under Sections 87 and 81 of the Tamil Nadu Co-operative Societies Act. It is also stated that criminal cases are pending against the petitioner and surcharge proceedings are also in progress apart from the criminal cases filed against the petitioner. The other averments in the counter affidavit indicating about the magnitude of the mistakes committed by the petitioner are not strictly necessary. It has been further stated that to alleviate the hardship of the petitioner, the respondent had sanctioned encashment of Earned Leave Salary and it has been paid to the petitioner. It is stated that there is no wilful neglect or malafide in withholding the pensionary benefits.

6. It is unfortunate that the respondent did not follow the required procedure by retaining the petitioner in service beyond the age of superannuation, even though the petitioner had been placed under suspension in contemplation of departmental proceedings. Because of such legal loophole and technical defect, the petitioner had taken advantage and filed W.P.Nos.18457 of 1998 and 40209 of 2002. Both the writ petitions were allowed and the disciplinary proceedings have been quashed by the learned single Judge by order dated 21.8.2003. Since such order has not been challenged by the Department in appeal, in law, it must be taken that departmental proceedings initiated against the petitioner stood quashed by virtue of the said order.

7. The subsequent order passed by the authority on 10.10.2003 stating that the petitioner is deemed to have been retired with effect from 30.6.1997 without prejudice to the disciplinary proceeding is untenable partially to the extent that there is no question of continuance of disciplinary proceedings as such proceedings had been quashed by the learned single Judge of the High Court. Such order having become final, it is not possible for the respondent to proceed with such disciplinary proceedings. Therefore, to that extent, the observation made in the impugned order "without prejudice to the disciplinary action" must be taken to be non-est and is hereby quashed. It is however made clear that there is no embargo for the Department to pursue the criminal case. Similarly there is no embargo for the Department to pursue in

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accordance with law the surcharge proceedings or other proceedings contemplated under Sections 81 & 87 of the Tamil Nadu Co-operative Societies Act. Once the petitioner has been allowed to retire and the disciplinary proceedings have become non-est as per the order passed by the learned single Judge in W.P.Nos.18457 and 40209 of 2002 dated 21.8.2003, in normal course the petitioner is entitled to retirement benefits.

8. The writ petition is accordingly allowed in part and the observation made in the impugned order that retirement is without prejudice to disciplinary proceedings is quashed. The respondent is directed to finalise the pensionary benefits and pay the same to the petitioner in accordance with law. However, if there is any provision empowering the authority to with-hold pension because of pendency of criminal case or pendency of proceedings under Sections 81 & 87 of the Tamil Nadu Co-operative Societies Act, it would be open to the authority to consider the same in accordance with law. No costs.

17-03-2006

dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Chief Executive Officer,
Khadi and Village Industries Board,
Kuraklagam, Chennai 108.

1 cc to Mr.B.Divakaran, Advocate, SR.13501

1 cc to Mr.S.Kamadevan, Advocate, SR.13442

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